

Nadler Statement on the Forbes Amendment At the Markup of H.R. 3773, the "Responsible Electronic Surveillance That is Overseen, Reviewed, and Effective Act of 2007"

Tuesday, 09 October 2007

Thank you, Mr. Chairman.

I rise in opposition to the substitute, the so-called substitute amendment by Mr. Forbes.

I start with the affirmative point. The Democratic bill, the bill before us, gives the administration everything it says it needs in terms of the actual tools to collect intelligence.

It is striking that nearly every comment from the minority today is directed at process and procedures, not at the substance of the tools that we seek to make available to the executive branch to protect this country's security.

We have heard virtually no comments to suggest that the administration would not receive every tool that it needs. The amendment fails to address the excesses that were in the so-called Protect America Act. Most fundamentally, it fails to protect the rights of Americans to be free of electronic surveillance by the executive branch when there is no supervision or awareness by either of the other branches of government.

Our history as a country has taught us that we cannot permit any executive to have unchecked secret power to invade the secret and private lives of American citizens.

We face serious challenges and threats, but as stated by no less than Justice O'Connor, former Justice O'Connor, hardly a fire-breathing radical, quote, "We have long since made clear that a state of war is not a blank check for the president when it comes to the rights of the nation's citizens."

The substitute amendment is little more than the administration's request for unchecked powers, free of any meaningful scrutiny and oversight, and it must be denied.

The gentleman from Texas says that the American people trust the intelligence professionals. Yes, they do and so do I. I trust the intelligence professionals to do everything possible to gather necessary intelligence.

We must trust the courts to protect our liberty. We do not trust the intelligence professionals to protect our liberty. That's not their prime function. We need both intelligence and liberty. We need both intelligence professionals gathering the intelligence and courts safeguarding our liberty.

That's why the Constitution establishes a system of checks and balances. The Protect America Act forgot about the second half of that equation. It forgot about allowing the courts to protect our liberty.

The substitute amendment continues that forgetfulness. The bill before us restores that American tradition so that we can gather all the intelligence we need, because we are indeed in a serious conflict, we must have that intelligence, but we must have court supervision to make sure that that intelligence is gathered in a manner consistent with the Constitution, with our laws and with our liberties.

That's the essence of this bill and the essence of the reason why this amendment must be rejected.

Let me add a word in response to the ranking member's comments on retroactive immunity.

He said that when companies cooperate in protecting us, they should not be subject to politically motivated lawsuits. Well, no one should be subject to politically motivated lawsuits. But it's up to the courts to decide when a lawsuit is politically motivated or frivolous or meritorious. That's why we have courts. That's their job.

It is not our job as a Congress to decide that a telecommunications company was patriotically cooperating in a lawful endeavor to help the war on terror or was engaged in a criminal conspiracy with a lawless administration to violate our liberties and violate our laws. It's not our job. That's the job of the court.

And if some people think that they broke the law, that the administration broke the law, that the telecommunication company broke the law, they should sue and the court should throw them out of court if they don't have the evidence to prove that the law was broken and should grant them damages if the evidence is there to prove that the law was broken.

That's why we have courts and those courts making those decisions are our only protection from any administration, not necessarily this one, from any executive having untrammelled power over our liberties and violating our liberties and pressuring private companies to conspire with them to violate our liberties and our laws.

The courts offer us protection against that. We must let the process work itself through, let the courts decide whether these companies, or some of them, were acting patriotically, with nobility and legally, or whether they were breaking the law.

That's the court's function. We should not usurp the court's function by granting retroactive immunity.

Why don't we simply say that we're going to grant retroactive immunity to a named list of accused rapists or murderers? Because we know better. We don't do that in this country and we should not start now.

Thank you. I yield back. And I urge the defeat of this amendment.

I yield back.

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